

Christopher T. Sweeney
Adam Warren
MOULTON BELLINGHAM PC
Suite 1900, Crowne Plaza
P. O. Box 2559
Billings, Montana 59103-2559
Telephone: (406) 248-7731
Fax: (406) 248-7889
Christopher.Sweeney@moultonbellingham.com
Adam.Warren@moultonbellingham.com

Attorneys for Defendants PCIC and Golden State

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

KELLY D. PORCH and MICHELLE R.
PORCH,

Plaintiffs,

-VS-

OCHOA'S CONSTRUCTION, INC.;
PREFERRED CONTRACTORS
INSURANCE COMPANY, RRG;
GOLDEN STATE CLAIMS ADJUSTERS;
and JOHN DOES I - V,

Defendants.

Case No. CV _____

NOTICE OF REMOVAL

Defendants Preferred Contractors Insurance Company Risk Retention Group LLC (PCIC)¹ and Golden State Claims Adjusters (Golden State) (collectively “Defendants”), by and through their undersigned attorneys, and pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441(a), give Notice of Removal of the above-captioned lawsuit to the United States District Court for the District of Montana, Billings Division. In support of this Notice of Removal, Defendants affirmatively allege as follows:

1. On May 23, 2017, Plaintiffs filed a “Second Amended Complaint and Demand for Jury Trial” (Second Amended Complaint) in the Montana Thirteenth Judicial District Court, Yellowstone County. PCIC and Golden State were, for the first time, named as parties in the Second Amended Complaint. A true and correct copy of the Second Amended Complaint is attached to this Notice as Exhibit A

2. On May 26, 2017, a Summons was issued to Defendants by the Yellowstone County District Court.

3. On May 30, 2017, Counsel for Defendants received the Summons along with Acknowledgments and Waivers of Service of a Summons.

4. This Notice of Removal is filed in accordance with 28 U.S.C. § 1446 in that it was filed within thirty days after receipt by the Defendants, “through service

¹ PCIC was incorrectly identified in the caption as Preferred Contractors Insurance Company, RRG.

or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based”

5. Plaintiffs’ lawsuit is removable pursuant to 28 U.S.C. 1441(a) since on the face of the Second Amended Complaint and the allegations contained therein, this is a civil action in which the Federal District Court would have original jurisdiction founded on claims of diversity of citizenship and amount in controversy pursuant to 28 U.S.C. § 1332 (a). In particular:

a. Based on information and belief, Plaintiff Kelly Porch is a citizen of the State of Missouri.

b. Based on information and belief, Plaintiff Michelle Porch is a citizen of the State of Missouri.

c. PCIC is a Montana limited liability company formed under the laws of the state of Montana with its principal place of business in Montana. The citizenship of PCIC’s managing members are Montana and California.

d. Golden State is a California corporation with its principal place of business in California.

e. Based on information and belief, Defendant Ochoa’s Construction, Inc. (“Ochoa”) was a Montana corporation with its principal place of business in Montana. It has been involuntarily dissolved by the Montana Secretary of State. Additionally, as alleged in the Second Amended

Complaint, Ochoa entered into a consent judgment in the amount of \$4,700,000.00 with Plaintiffs in exchange for a covenant not to execute against Ochoa and an assignment to Plaintiffs of all of Ochoa's rights against PCIC and Golden State. As such, Defendant Ochoa is a nominal party with nothing at stake, and it may be disregarded for purposes of diversity and consent to removal. *See e.g., Strotek Corp. v. Air Transport Ass'n of America*, 300 F.3d 1129, 1133 (9th Cir.2002); *Broadway v. Meek*, 2017 WL 2198945, *1 (D.Mont. May 18, 2017); *Creed v. Virginia*, 596 F.Supp.2d 930, 934-935 (E.D.Va. 2009).

f. The matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. In particular, Plaintiffs' claimed damages in their Second Amended Complaint are \$4.7 million.

6. Venue is proper in the United States District Court for the District of Montana, Billings Division, pursuant to 28 U.S.C. § 1391(b)(2), and L.R. 3.2(b).

7. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and contains a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon the Defendants, attached hereto as Exhibit B.

13. By filing this Notice of Removal, Defendants are not waiving any defense which may be available to them, and they do not concede that Plaintiffs have

stated claims upon which relief may be granted. By filing this Notice of Removal, Defendants also do not waive the right to move the Court to dismiss this case for lack of subject matter jurisdiction or for failure to state a claim upon which relief can be granted, under Fed.R.Civ.P. 12, or upon similar grounds, because Defendants were improperly added to this case after final judgment had been entered.

14. No hearings or other proceedings have been set in this action.

15. Pursuant to 28 U.S.C. § 1446(d) and Local Federal Rule 3.3, a copy of this Notice of Removal will be filed promptly with the Clerk of Court for the Thirteenth Judicial District Court, Yellowstone County, State of Montana, in which this action has been pending, and written notice thereof will be promptly provided to counsel for all adverse parties.

DATED this 28th day of June, 2017.

MOULTON BELLINGHAM PC

By: /s/ Christopher T. Sweeney
Christopher T. Sweeney
Adam Warren
27 N. 27th St., Suite 1900
P.O. Box 2559
Billings, MT 59103-2559